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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,006	10/10/2001	David P. Aschenbeck	25019A	8542
22889	7590	04/30/2004	EXAMINER	
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023				WATKINS III, WILLIAM P
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/975,006	<b>Applicant(s)</b> ASCHENBECK ET AL.
	<b>Examiner</b> William P. Watkins III	<b>Art Unit</b> 1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 April 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 8-10,53 and 55 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 8-10,53 and 55 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

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**DETAILED ACTION**

1. The finality of the office action mailed 16 March 2004 is withdrawn in view of the new grounds of rejection given below. The instant office action replaces the office action mailed 16 March 2004 and the period of response is restarted with the mailing of the instant office action.

2. The 103 rejection over Miller et al. in view of Vermilion et al. given in section 5 of the office action mailed 16 March 2004 is withdrawn regarding claims 10 and 55 only. The examiner accepts applicant's argument in the paper filed 09 April 2004 that the entire top portion of the top coating refers to the entire top coating and not just the entire top surface of the first coating. The reasons for maintaining the rejection against claims 8-9 and 53 are given below. The 103 rejection using Schult has been modified and is treated as a new grounds of rejection below. Applicant's arguments regarding the polyolefin/bitumen layer of Schult not being bitumen based due to the low percentage of bitumen have been accepted.

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 8-10 and 53 and 55 are rejected under 35 U.S.C. 103(a) as being obvious over Miller et al. (WO 00/40794) in view of Vermilion et al. (U.S. 5,494,728).

Miller et al. teaches an improved weather ability upper layer in a 60-day test (page 18, lines 10-30). The weather ability is improved by a top coating layer on the top asphalt portion that may cover the entire surface of the top portion of the roofing material (page 9, lines 1-5). The asphalt coating may contain fillers (page 6, lines 25-30). The coated web is preferably made of glass fibers (page 6, lines 5-10). Vermilion et al. teaches the use of fillers in conventional asphalt roofing material in the 65% weight range (col. 1, lines 25-35). The instant invention claims the use of a coating asphalt with a weather resistant top portion and a filler loading of 30% to

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75%. It would have been obvious to one of ordinary skill in the art to make use an amount of filler in the asphalt of Miller et al. in the conventional weight percent amount of 65% in order to have normal performance of the coating because of the teachings of Vermilion that this is an accepted value.

5. Claims 8-10 and 53 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schult (U.S. 4,911,975) in view of Yap et al. (U.S. 6,037,398) and Wilkes (U.S. 4,609,696).

Schult teaches a top coating on a roofing product that gives enhanced weather ability and that is highly reflective of light (col. 2, lines 10-15). The coating may be polyolefin with bitumen and with a level of fillers in the 50% weight range (col. 4, lines 55-60). The top layer may have a thickness of .2 to .25 centimeters (col. 4, line 34). The center portion may be a glass mat and be penetrated by the coating layers (col. 4, lines 40-42, col. 3, lines 45-50). The bottom coating layer may have a filler loading of 10% to 20% by weight (col. 2, line 27). Yap et al. teach the use of an asphalt with solvent modified with polymer, aluminum flakes and other inert fillers at up to 50% by weight to form a highly reflective asphalt based coating that has good weather ability (col. 1, lines 25-35, col. 2, lines 5-20). Wilkes as prior art teaches the use of asphalt

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coatings applied either as hot coatings without solvent or as solvent coatings that are applied cold and then hardened by solvent evaporation (col. 1, lines 10-35). The instant invention claims a top coating layer with an increased weather ability and a central glass fabric layer and a bottom coating of different weather ability with the filler loading of the asphalt based coating being in the 30% to 75% weight range. It would have been obvious to one of ordinary skill in the art to select the option of equally thick top and bottom layers with polyolefin/bitumen and asphalt based materials on a glass fiber center mat from the various combinations of options taught by Schult in order to practice the invention of Schult. The average of filler at 50% by weight in the top coating with filler at 20% weight in the bottom coating for layers being of equal thickness would give an average of over 30% weight filler in the total asphalt based coating of the central web, which meets the instant claim language. It further would have been obvious to have substituted the reflective asphalt of Yap et al. for the polyethylene/bitumen layer of Schult in order to have similar reflectivity and increased weather ability with a lower cost asphalt based material. It also further would have been obvious to substitute a hot melt form of the coating of Schult in view of Yap et al. for the solvent coating of Schult in view

of Yap et al. in order to avoid handling solvent in the process of Schult in view of Yap et al. because of the teachings of Wilkes that either solvent based or hot melt based forms of asphalt may be applied depending on process application location and conditions. The increased weather ability of both the upper layer of both Schult and Yap et al. are taken as meeting the instant claim limitation regarding the 60 day test as both references teach increased weather ability over standard roof outer layers and the PTO does not have experimental facilities to determine the actual weather ability of the references. The burden of proof is therefore shifted to applicant (MPEP 2112 and 2113).

6. Applicant's arguments with respect to claims 8-10, 53 and 55 and Schult have been considered and have been treated above in view of the new ground(s) of rejection.

Regarding the rejection of Miller et al. in view of Vermilion et al. applicant argues that the entire top coating including the top surface layer must be an asphalt based coating because of the instant claim language in view of the specification. The examiner does not agree with this construction. Though most of the embodiments in the specification specify that layer 24T in Figure 2 is an asphalt

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based layer as is layer 24, the specification only says at page 12 lines 25-30 that the 24T layer in the instant claimed embodiment may be made of material other than a lower cost asphalt. It does not specify a higher cost asphalt. This read in combination with the top upper surface layer being a separate adhesive layer at page 17, lines 24-30, leads the examiner to construct the instant claim language as being open to different materials than asphalt based materials in the top surface layer.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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April 27, 2004



**WILLIAM P. WATKINS III**  
**PRIMARY EXAMINER**